

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 516 OF 2021

Ganesh Babarao Ingle,
Aged about 39 years, Occupation:
Agriculturist, Resident of Khadaksaonga,
Tahsil : Babulgaon, District: Yavatmal.

.... **APPELLANT.**

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Babulgaon,
Tahsil : Babulgaon, District : Yavatmal.
2. Jyotsna Devidas Uikey,
Aged about 30 years, Occupation:
Labour, Resident of Khadaksaonga,
Tahsil : Babulgaon, Distt. Yavatmal.

.... **RESPONDENTS.**

Shri Atharva S. Manohar, Advocate for Appellant.
Ms Trupti Udeshi, A.P.P. for Respondent/State.
Shri Bhushan Dafle, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 24, 2022.

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.**

3. Apprehending arrest in connection with Crime No.434 of 2021 registered by the respondent No.1/ State for the offences punishable under Sections 354 and 506 of the Indian Penal Code and Sections 3(1)(w)(1) and 3(2)(v-a) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appellant had filed application under Section 438 of the Code of Criminal Procedure before the Sessions Court. This application is dismissed by the impugned order.

4. The crime was registered against the appellant on the complaint lodged by the complainant (aged about 30 years). According to the complainant, the appellant had been keeping ill-eye on the complainant and on 10/10/2021 at about 05:00 a.m., when the complainant had gone to bathroom adjoining to her house, the appellant came from backside and caught her and pressed her breasts and make demand for coitus. According to the Investigating Agency, the appellant gave such treatment to the complainant knowing that she belongs to Scheduled Tribe.

5. Shri Manohar, learned counsel for the appellant states that prior to the instant complaint, wife of the appellant lodged a complaint on 24/07/2021 alleging that the complainant in this matter, made demand of money and abused her and gave threats of filing false complaint against her and the appellant. It is submitted that there is enmity between the appellant and the complainant and the First Information No. 434 of 2021 is the outcome of the said enmity.

6. Shri Manohar, learned counsel for the appellant submits that there are no allegations to the effect that because the complainant belongs to Scheduled Tribes Category, the appellant has committed the alleged offence. He submits that mere fact that the victim happened to be a woman belonging to Scheduled Tribe does not attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, the requirement is that the offence was committed only on the ground that the victim was a member of the Scheduled Tribes. For this purpose, he has placed reliance on the judgments of the Hon'ble Supreme Court in the case of *Hitesh Verma .vs. State of Uttarakhand*, reported in (2020) 10 SCC 710 and *Ramdas .vs. State of Maharashtra*, reported in (2007)2 SCC 170.

7. The learned advocate for the appellants has drawn attention to the F.I.R. and submitted that there are no accusations against the appellants on the basis of which the crime for the offence punishable under Section 3(1)(w)(i), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be registered against the appellants.

8. The learned A.P.P. and the learned counsel for the respondent No.2 are not disputing this legal position and also they are not disputing that there are no allegations in the FIR that the appellant has committed this offence only because the complainant belongs to Scheduled Tribe.

9. The learned A.P.P. has submitted that though the accusations are not found in the F.I.R., in the investigation it is revealed that the appellant used abusive language against the complainant and therefore, the crime for the offence punishable under Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered against the appellant.

10. Be that as it may, considering the nature of the accusations against the appellant, and as the Investigating Agency has not been able to point out that custodial interrogation of the appellant is necessary and as I find that in absence of allegation that the alleged offence was committed by the appellant only because the complainant belongs to Scheduled Tribe, *prima-facie*, ingredients necessary to constitute the offence punishable under Sections 3(1)(w)(i), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not existing and the prosecution will have to prove its case at the trial. Hence, I pass the following order:

- i) The Criminal Appeal is allowed.
- ii) The order passed by the Additional Sessions Judge, Yavatmal below Criminal Bail Application No.366 of 2021 on 25th November 2021 is set aside.
- iii) The interim order passed on 4th December 2021 granting pre-arrest bail to the appellant is confirmed.

The Criminal Appeal stands **disposed of** accordingly.